In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.6924-M of 2007

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Date of decision:21.5.2007

Chander Pal Singh

.....Petitioner

v.

State of Punjab

.....Respondent

....

Present: Mr. Shiv Raj Malik, Advocate for the petitioner.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

Mr. Harinder Sharma, Advocate for the complainant.

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S.S. Saron, J.

The petitioner Chander Pal Singh seeks pre-arrest bail in terms of Section 438 Cr.P.C. in case FIR No.207 dated 5.11.2006 for the offences under Sections 363, 366A, 341, 506 and 120-B IPC registered against him at Police Station City, Kotkapura.

The FIR has been registered on the complaint of Raj Kumar. It is alleged that his daughter Shelly, who was studying in 10+2, had suddenly on 10.10.2006 at about 6.00 p.m. left the house. Despite search she could not be traced. On the following day i.e. 11.10.2006 at about 11.00 a.m. the complainant received a call on his mobile. The calling party informed the complainant that his daughter has been taken away by the petitioner on the pretext of marrying her. Thereafter, his daughter made a call at about 6.15 p.m. and told the complainant that she had been taken by the petitioner on the saying of his sister Gaytri Devi and the husband of Gaytri Devi, namely,

Narinder Kumar. She has been confined under threat by them and also one Chameli Devi wife of Ram Phool Singh. On the basis of the above, the FIR has been registered for the afore-noticed offences.

Learned counsel for the petitioner has submitted that in fact the petitioner and Smt. Shelly had a liking for each other since they had been knowing each other for the last 2/3 years. Since Shelly was a minor the petitioner waited till she attained majority as the parents of Shelly were against the affair which the petitioner had with Shelly. It is further stated that the petitioner and Shelly has solemnized their marriage on 10.10.2006 and photographs (Annexure-P.1) in this regard have been placed on record. It is stated that Shelly is not a minor and she is a major and she left her parental home on her own without any allurement or enticement. She has married the petitioner with her independent will and without any pressure, threat or coercion of any kind. It is stated that the allegations in the FIR that Shelly was taken on the pretext of marrying her is wrong. She was taken so as to marry her as petitioner and Shelly liked each other. A reference has also been made to the affidavit dated 31.1.2007 (Annexure-P.2) deposed by Shelly in which she has inter alia stated that she has solemnized her marriage on 10.10.2006 with the petitioner and she had attained the age of majority. It is deposed by Shelly that she had a liking for the petitioner for the last 2/3 years. Therefore, she waited till she attained the age of majority and then the marriage was solemnized. It is stated that the marriage has been solemnized by her with her free will and wish and since the solemnization of marriage she is leading a happy married life.

Learned counsel for the State and complainant have submitted

that the date of birth of Shelly is 9.6.1989 and, therefore, she was less than 18 years of age. As such, Shelly has not reached the age of majority and is in the illegal confinement of the petitioner. The solemnization of marriage, it is submitted, has been cooked by the petitioner so as to avoid the criminal proceedings against him.

Learned counsel for the petitioner in response has further submitted that even if the date of birth of Shelly is taken to be 9.6.1989 in that eventuality also on the date of solemnization of marriage i.e. 10.10.2006 she was more than 17 years of age and, therefore, the petitioner cannot be held liable for the offences attributed to him. In support of his contention, learned counsel has referred to S. Varadarajan v. State of Madras, AIR 1965 SC 942 and Lalta Prasad v. State of Madhya Pradesh, 1979 Cr. L.J. 867 (SC). A reference has also been made to a judgment of Single Bench of the High Court of Himachal Pradesh in Kamal Singh v. The State of H.P., 1985 (1) Crimes 151. Further reference is made to the case of Bhagwan Singh and others v. State and another, 2007 (1) RCR (Cr.) 347 (Delhi).

I have given my thoughtful consideration to the matter. It may be noticed that Shelly had left has parental home on her own. An affidavit dated 31.1.2007 (Annexure-P.2) has been deposed by her in which she has stated that she had solemnized her marriage with the petitioner without any pressure, threat, coercion from anyone. Besides, she had a liking for the petitioner and she had gone with him of her own free will. The photographs (Annexure-P.1) showing the solemnization of the marriage have also been placed on record. The effect of the petitioner being less than 18 years of age on the basis that her date of birth is 9.6.1989 as contended

by the learned counsel for the State and the complainant is to be considered and gone into by the investigating authorities at the time of filing of final report (challan) in terms of Section 173 Cr.P.C. and in case a charge-report is filed the same is to be considered by the Court. At this stage it is not for this Court to go into these aspects as the petitioner is seeking pre-arrest bail.

The Supreme Court in S. Varadarajan v. State of Madras (supra) held that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have “taken” her out of the keeping of her lawful guardianship, that is the father in the said case.

In Lalta Prasad v. State of M.P. (supra) it was observed by the Supreme Court that girl was found to have gone with the accused of her free will and with consent of her mother and there was no proof that she was taken by accused to seduce her to illicit intercourse, the accused would not be guilty for the offence under Section 366 IPC.

The Himachal Pradesh High Court in Kamal Singh v. The State of H.P. (supra) considered the case where there was some intimacy between prosecutrix and the appellant in the said case and the prosecutrix was willing and active agent in her enticement and she accompanied the accused of her own accord while her parents were asleep, it was held that even though the prosecutrix was below 18 years would not be material. The accused therein was acquitted. The Delhi High Court in Bhagwan Singh and others v. State of another (supra) considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age. As has already been noticed the present is a case of pre-arrest bail where the matter is yet to be considered. However, at present there is nothing to show that Shelly has been enticed by the petitioner so as to take her away. In the circumstances, even though Shelly is less than 18 years of age would be inconsequential.

For the foregoing reasons, the interim order dated 5.2.2007 is made absolute and the same shall continue till the filing of final report and in case the petitioner is to be charge-sheeted (challaned) he shall furnish necessary bail bond to secure his presence during trial of the case.

May 21, 2007. **(S.S. Saron)**
Judge

hsp